

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

PERETZ LLC, a Florida Limited Liability Company,)	Civil Action No. 2:24-cv-04368-DCN
)	
)	
PLAINTIFF,)	
)	
vs.)	
)	
CAROLINA RESTAURANT)	COMPLAINT
GROUP INC., a North Carolina)	
Company,)	
)	
DEFENDANT.)	
_____)	

Plaintiff PERETZ LLC (“Peretz LLC”) sues Defendant CAROLINA RESTAURANT GROUP, INC. (“Carolina Group”) and states:

INTRODUCTION

1. This action arises from Defendant Carolina Restaurant Group Inc.'s ("Carolina Group") repudiation and breach of its express obligations under its Lease Agreement with Plaintiff Peretz LLC ("Peretz LLC") to perform significant renovations to the leased property located in North Charleston, South Carolina.

THE PARTIES

2. Peretz LLC is a limited liability company organized under the laws of Florida with its principal place of business in Florida. Peretz LLC is composed of three family members: Harvey Peretz DDS, David Peretz DMD, and Steven Peretz. All three members are residents and

citizens of Florida. The managing member of Peretz LLC is Dr. Harvey Peretz, a retired dentist, who is now 93 years old.

3. Carolina Group is a corporation incorporated in North Carolina with its principal place of business in North Carolina.

JURISDICTION & VENUE

4. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1332 as there is complete diversity of citizenship between the parties. Peretz LLC and its three members are citizens of Florida and Carolina Group is a citizen of North Carolina. The amount in controversy exceeds \$75,000, exclusive of interest and costs.

5. This Court has personal jurisdiction over Carolina Group because Carolina Group holds a leasehold interest in South Carolina real estate and conducts a regular course of business in South Carolina.

6. Venue is proper in this judicial district under 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claim occurred in this judicial district and because the property subject of this action is situated in this judicial district.

GENERAL FACTUAL ALLEGATIONS

7. Peretz LLC owns and leases to Carolina Group a Wendy's restaurant (the "Wendy's Restaurant") located at 4113 Rivers Ave., North Charleston, South Carolina, under a lease that expires on March 31, 2025 (the "Lease Agreement"). At all relevant times, Carolina Group has operated over 100 Wendy's restaurants in the southeast United States. Carolina Group, as lessee, has operated the Wendy's Restaurant as a Wendy's International franchisee since 2019 when the prior lessee/franchise assigned the Lease Agreement to Carolina Group with the approval of Peretz

LLC. Under the Assignment and Assumption of Lease, Carolina Group assumed “all obligations, liabilities, and covenants arising under the Lease...”

8. In particular, the Lease Agreement obligated Carolina Group to comply with the Wendy’s International renovation requirements:

Lessee shall ... operate, remodel, update, and modernize the Premises in accordance with those standards adopted from time to time by Franchisor on a system-wide basis for Permitted Concepts with such remodeling and modernizing being undertaken in accordance with Franchisor’s system-wide timing schedules for such activities...

(Referred to hereinafter as the “Required Renovations.”)

9. Additionally, as part of the same assignment and assumption transaction, Carolina Group needed the consent of Wendy’s International to assume the Lease Agreement and enter into a new franchise agreement. Accordingly, Carolina Group entered into an Agreement and Consent to Assignment with Wendy’s International. This agreement set a firm deadline of December 31, 2024, for Carolina Group to complete the Required Renovations:

Notwithstanding anything to the contrary contained in the New Franchise Agreements, Franchisee [Carolina Group] and Guarantors acknowledge and agree that Franchisee must reimage the Restaurant in compliance with Franchisor’s Brand Sustainability Requirements and Franchisor’s then-current reimagining design plans, specifications, and standards such that ... 100% of the Franchisee’s Restaurant Portfolio must be reimaged by December 31, 2024....

10. The December 31, 2024 deadline set forth in the Assignment and Assumption Agreement contractually bound Carolina Group to complete the Required Renovations by December 31, 2024 under the Lease Agreement.

11. Peretz LLC relied upon the December 31, 2024 deadline for the Carolina Group to complete the Required Renovations in consenting to Carolina Group’s assignment and assumption of the Lease Agreement

12. Carolina Group initially scheduled the Required Renovations for 2022, but rescheduled them first to 2023 and then to 2024, claiming high construction costs as the reason for the delays.

13. On February 4, 2024, Carolina Group advised Peretz LLC by telephone that it would only renew the Lease Agreement if Peretz LLC agreed to finance the cost of the Required Renovations under a proposal that Carolina Group would submit. This request was contrary to the express terms of the Lease Agreement, which required Carolina Group to bear the full costs of the Required Renovations. Nonetheless, Peretz LLC agreed to consider Carolina Group's proposal if financially reasonable. Upon information and belief, the cost of the Required Renovations would be upwards of \$1 million.

14. Carolina Group, however, never provided its promised proposal to Peretz LLC, despite Peretz LLC's repeated requests.

15. On April 4, 2024, Peretz LLC advised Carolina Group that if Carolina Group failed to complete the Required Renovations by the December 31, 2024 deadline then Peretz LLC would hold Carolina Group in breach of the Lease Agreement.

16. On April 5, 2024, Carolina Group emailed Peretz LLC that Wendy's International had, at Carolina Group's request, allegedly extended the deadline for Carolina Group's completion of the Required Renovations from December 31, 2024 to December 31, 2025 -- a date well after the lease term expired on March 31, 2025. The email further advised Peretz LLC that Wendy's International had, also at Carolina Group's request, allegedly given its approval for Carolina Group to close the Wendy's Restaurant before the lease term expired.

17. Irrespective of the alleged extension of the Required Renovation deadline, Carolina Group had repudiated its express obligation under the Lease Agreement to complete the

Required Renovations by December 21, 2024 -- the date in effect and relied upon by Peretz LLC in consenting to Carolina Group's assumption of the Lease Agreement in 2019.

18. On April 16, 2024, Peretz LLC advised Carolina Group by email that Carolina Group was in breach of the Lease Agreement by repudiating its obligation to complete the Required Renovations by December 31, 2024, and that Carolina Group's solicitation of Wendy's International to "grant Carolina a unilateral release of that contractual obligation was done without [Peretz LLC's] knowledge or consent, and [did] not alter [its] obligations to [Peretz LLC]."

19. On July 17, 2024, Carolina Group confirmed to Peretz LLC by phone that it would not renew the Lease Agreement and would not perform the Required Renovations by December 31, 2024.

20. Carolina Group's repudiation of its obligation to perform the Required Renovations when due constituted an anticipatory breach of the Lease Agreement.

DAMAGES

21. Peretz LLC seriously considered selling the property in 2020 based on (a) the favorable market conditions at the time; (b) the property had an established Wendy's Restaurant operating on it; (c) the Wendy's Restaurant was being operated by an authorized and experienced Wendy's franchisee that was paying regular monthly rent under an existing Lease in good standing; (d) Carolina Group was contractually bound to make such payments through March, 2025; and (e) Carolina Group was required to renovate the Wendy's Restaurant on or before December 31, 2024.

22. Peretz LLC, however, refrained from selling the property based on Carolina Group's repeated assurances to Peretz LLC that Carolina Group would perform the Required

Renovations at Carolina Group's own expense and thereby significantly enhance the market value of the property for the benefit of Peretz LLC.

23. Carolina Group's repudiation of its obligation to renovate the Wendy's Restaurant by the December 31, 2024 has already resulted in significant economic loss to Peretz LLC. By reason of Carolina Group's breach of the lease, Peretz LLC will own an outdated and non-compliant Wendy's Restaurant structure without a tenant after March 31, 2025.

24. The cost of making the Wendy's Restaurant compliant with the standards imposed by Wendy's International will cost Peretz LLC upwards of \$1 million, and that assumes Peretz LLC can secure an authorized Wendy's franchisee as a new lessee for the property. Without securing a new Wendy's tenant, the resale value of the property will decline precipitously by well more than \$1 million.

COUNT I

BREACH OF CONTRACT

25. Peretz LLC reasserts and incorporates by reference the allegations contained in paragraphs 1 through 24.

26. The Lease Agreement constitutes a valid and legally binding contract between Peretz LLC and Carolina Group.

27. Under the Lease Agreement, Carolina Group was required to complete the Required Renovations no later than a date set by Wendy's International. As part of the same 2019 transaction where Peretz LLC and Wendy's International consented to Carolina Group's assumption of the Lease Agreement, Carolina Group also agreed that it would complete the Required Renovations by December 31, 2024.

28. Carolina Group has breached the Lease Agreement by repudiating its obligation to complete the Required Renovations by December 31, 2024.

29. As a direct result of Carolina Group's breach, Peretz LLC has suffered damages, including but not limited to diminished property value, lost profits and lost opportunities.

COUNT II

BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING

30. Peretz LLC reasserts and incorporates by reference the allegations contained in paragraphs 1 through 24.

31. The Lease Agreement constitutes a valid and legally binding contract between Peretz LLC and Carolina Group.

32. Under the Lease Agreement, Carolina Group was explicitly obligated to perform the Required Renovations in accordance with the standards imposed by Wendy's International by a deadline set by Wendy's International.

33. Carolina Group breached its implied covenant of good faith and fair dealing by requesting -- without Peretz LLC's prior knowledge or consent -- that Wendy's International release it from performing its Renovation Obligations by December 31, 2024, a date set and relied upon by Peretz LLC in 2019 when Peretz LLC, Carolina Group, and Wendy's International consented to Carolina Group assuming the Lease Agreement.

34. As a direct result of Carolina Group's breach, Peretz LLC has suffered damages, including but not limited to diminished property value, lost profits and lost opportunities.

WHEREFORE, Peretz LLC respectfully demands a trial by jury and requests the following relief:

- Judgment against Carolina Group for damages in an amount to be determined at trial;
- Pre-judgment and post-judgment interest on any amounts awarded

- Costs of this action; and
- Such other and further relief as this Court deems just and proper.

GORDON REES SCULLY MANSUKHANI, LLP

By: s/Peter G. Siachos

Peter G. Siachos (Fed. Bar No. 7591)

E-mail: psiachos@grsm.com

Chandler Rowh (Fed. Bar No. 13132)

Email: crowh@grsm.com

677 King Street, Suite 450

Charleston, SC 29403

Telephone: (843) 714-2505

Attorneys for Plaintiff Peretz LLC

Charleston, South Carolina

Dated: August 9, 2024